

CENTER FOR DISABILITY ACCESS
Amanda Seabock, Esq., SBN 289900
Prathima Price, Esq., SBN 321378
Dennis Price, Esq., SBN 279082
Mail: 8033 Linda Vista Road, Suite 200
San Diego, CA 92111
(858) 375-7385; (888) 422-5191 fax
amandas@potterhandy.com

Attorneys for Plaintiff

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

Scott Johnson

Plaintiff,

v.

Acapulco Taqueria Inc., a
California Corporation

Defendants.

Case No.

**Complaint For Damages And
Injunctive Relief For Violations
Of: Americans With Disabilities
Act; Unruh Civil Rights Act**

Plaintiff Scott Johnson complains of Acapulco Taqueria Inc., a California Corporation; and alleges as follows:

PARTIES:

1. Plaintiff is a California resident with physical disabilities. Plaintiff is a level C-5 quadriplegic. He cannot walk and also has significant manual dexterity impairments. He uses a wheelchair for mobility and has a specially equipped van.

2. Defendant Acapulco Taqueria Inc. owned The Mexican Restaurant & Bar located at or about 19950 Hesperian Blvd, Hayward, California, between August 2020 and March 2021.

1 3. Defendant Acapulco Taqueria Inc. owns The Mexican Restaurant & Bar
 2 (“Restaurant”) located at or about 19950 Hesperian Blvd, Hayward,
 3 California, currently.

4 4. Plaintiff does not know the true names of Defendants, their business
 5 capacities, their ownership connection to the property and business, or their
 6 relative responsibilities in causing the access violations herein complained of,
 7 and alleges a joint venture and common enterprise by all such Defendants.
 8 Plaintiff is informed and believes that each of the Defendants herein is
 9 responsible in some capacity for the events herein alleged, or is a necessary
 10 party for obtaining appropriate relief. Plaintiff will seek leave to amend when
 11 the true names, capacities, connections, and responsibilities of the Defendants
 12 are ascertained.

13
 14 **JURISDICTION & VENUE:**

15 5. The Court has subject matter jurisdiction over the action pursuant to 28
 16 U.S.C. § 1331 and § 1343(a)(3) & (a)(4) for violations of the Americans with
 17 Disabilities Act of 1990, 42 U.S.C. § 12101, et seq.

18 6. Pursuant to supplemental jurisdiction, an attendant and related cause
 19 of action, arising from the same nucleus of operative facts and arising out of
 20 the same transactions, is also brought under California’s Unruh Civil Rights
 21 Act, which act expressly incorporates the Americans with Disabilities Act.

22 7. Venue is proper in this court pursuant to 28 U.S.C. § 1391(b) and is
 23 founded on the fact that the real property which is the subject of this action is
 24 located in this district and that Plaintiff's cause of action arose in this district.

25
 26 **FACTUAL ALLEGATIONS:**

27 8. Plaintiff went to the Restaurant in August 2020 with the intention to
 28 avail himself of its goods or services motivated in part to determine if the

1 defendants comply with the disability access laws. Not only did Plaintiff
2 personally encounter the unlawful barriers in August 2020, but he wanted to
3 return and patronize the business several times but was specifically deterred
4 due to his actual personal knowledge of the barriers gleaned from his
5 encounter with them.

6 9. The Restaurant is a facility open to the public, a place of public
7 accommodation, and a business establishment.

8 10. Unfortunately, on the date of the plaintiff's visit, the defendants failed
9 to provide wheelchair accessible dining surfaces in conformance with the ADA
10 Standards as it relates to wheelchair users like the plaintiff.

11 11. The Restaurant provides dining surfaces to its customers but fails to
12 provide wheelchair accessible dining surfaces.

13 12. One problem that plaintiff encountered was the lack of sufficient knee
14 or toe clearance under the outside dining surfaces for wheelchair users.

15 13. Plaintiff believes that there are other features of the dining surfaces that
16 likely fail to comply with the ADA Standards and seeks to have fully compliant
17 dining surfaces for wheelchair users.

18 14. On information and belief, the defendants currently fail to provide
19 wheelchair accessible dining surfaces.

20 15. These barriers relate to and impact the plaintiff's disability. Plaintiff
21 personally encountered these barriers.

22 16. As a wheelchair user, the plaintiff benefits from and is entitled to use
23 wheelchair accessible facilities. By failing to provide accessible facilities, the
24 defendants denied the plaintiff full and equal access.

25 17. The failure to provide accessible facilities created difficulty and
26 discomfort for the Plaintiff.

27 18. The defendants have failed to maintain in working and useable
28 conditions those features required to provide ready access to persons with

1 disabilities.

2 19. The barriers identified above are easily removed without much
3 difficulty or expense. They are the types of barriers identified by the
4 Department of Justice as presumably readily achievable to remove and, in fact,
5 these barriers are readily achievable to remove. Moreover, there are numerous
6 alternative accommodations that could be made to provide a greater level of
7 access if complete removal were not achievable.

8 20. Plaintiff will return to the Restaurant |to avail himself of its goods or
9 services and to determine compliance with the disability access laws once it is
10 represented to him that the Restaurant and its facilities are accessible. Plaintiff
11 is currently deterred from doing so because of his knowledge of the existing
12 barriers and his uncertainty about the existence of yet other barriers on the
13 site. If the barriers are not removed, the plaintiff will face unlawful and
14 discriminatory barriers again.

15 21. Given the obvious and blatant nature of the barriers and violations
16 alleged herein, the plaintiff alleges, on information and belief, that there are
17 other violations and barriers on the site that relate to his disability. Plaintiff will
18 amend the complaint, to provide proper notice regarding the scope of this
19 lawsuit, once he conducts a site inspection. However, please be on notice that
20 the plaintiff seeks to have all barriers related to his disability remedied. See
21 *Doran v. 7-11*, 524 F.3d 1034 (9th Cir. 2008) (holding that once a plaintiff
22 encounters one barrier at a site, he can sue to have all barriers that relate to his
23 disability removed regardless of whether he personally encountered them).

24
25 **I. FIRST CAUSE OF ACTION: VIOLATION OF THE AMERICANS**
26 **WITH DISABILITIES ACT OF 1990** (On behalf of Plaintiff and against all
27 Defendants.) (42 U.S.C. section 12101, et seq.)

28 22. Plaintiff re-pleads and incorporates by reference, as if fully set forth

1 again herein, the allegations contained in all prior paragraphs of this
2 complaint.

3 23. Under the ADA, it is an act of discrimination to fail to ensure that the
4 privileges, advantages, accommodations, facilities, goods and services of any
5 place of public accommodation is offered on a full and equal basis by anyone
6 who owns, leases, or operates a place of public accommodation. See 42 U.S.C.
7 § 12182(a). Discrimination is defined, inter alia, as follows:

- 8 a. A failure to make reasonable modifications in policies, practices,
9 or procedures, when such modifications are necessary to afford
10 goods, services, facilities, privileges, advantages, or
11 accommodations to individuals with disabilities, unless the
12 accommodation would work a fundamental alteration of those
13 services and facilities. 42 U.S.C. § 12182(b)(2)(A)(ii).
- 14 b. A failure to remove architectural barriers where such removal is
15 readily achievable. 42 U.S.C. § 12182(b)(2)(A)(iv). Barriers are
16 defined by reference to the ADA Standards.
- 17 c. A failure to make alterations in such a manner that, to the
18 maximum extent feasible, the altered portions of the facility are
19 readily accessible to and usable by individuals with disabilities,
20 including individuals who use wheelchairs or to ensure that, to the
21 maximum extent feasible, the path of travel to the altered area and
22 the bathrooms, telephones, and drinking fountains serving the
23 altered area, are readily accessible to and usable by individuals
24 with disabilities. 42 U.S.C. § 12183(a)(2).

25 24. When a business provides facilities such dining surfaces, it must provide
26 accessible dining surfaces.

27 25. Here, accessible dining surfaces have not been provided in
28 conformance with the ADA Standards.

1 26. The Safe Harbor provisions of the 2010 Standards are not applicable
2 here because the conditions challenged in this lawsuit do not comply with the
3 1991 Standards.

4 27. A public accommodation must maintain in operable working condition
5 those features of its facilities and equipment that are required to be readily
6 accessible to and usable by persons with disabilities. 28 C.F.R. § 36.211(a).

7 28. Here, the failure to ensure that the accessible facilities were available
8 and ready to be used by the plaintiff is a violation of the law.

9
10 **II. SECOND CAUSE OF ACTION: VIOLATION OF THE UNRUH CIVIL**
11 **RIGHTS ACT** (On behalf of Plaintiff and against all Defendants.) (Cal. Civ.
12 Code § 51-53.)

13 29. Plaintiff repleads and incorporates by reference, as if fully set forth
14 again herein, the allegations contained in all prior paragraphs of this
15 complaint. The Unruh Civil Rights Act (“Unruh Act”) guarantees, inter alia,
16 that persons with disabilities are entitled to full and equal accommodations,
17 advantages, facilities, privileges, or services in all business establishment of
18 every kind whatsoever within the jurisdiction of the State of California. Cal.
19 Civ. Code § 51(b).

20 30. The Unruh Act provides that a violation of the ADA is a violation of the
21 Unruh Act. Cal. Civ. Code, § 51(f).

22 31. Defendants’ acts and omissions, as herein alleged, have violated the
23 Unruh Act by, inter alia, denying, or aiding, or inciting the denial of, Plaintiff’s
24 rights to full and equal use of the accommodations, advantages, facilities,
25 privileges, or services offered.

26 32. Because the violation of the Unruh Civil Rights Act resulted in difficulty,
27 discomfort or embarrassment for the plaintiff, the defendants are also each
28 responsible for statutory damages, i.e., a civil penalty. (Civ. Code § 55.56(a)-

(c.)

33. Although the plaintiff encountered frustration and difficulty by facing discriminatory barriers, even manifesting itself with minor and fleeting physical symptoms, the plaintiff does not value this very modest physical personal injury greater than the amount of the statutory damages.

PRAYER:

Wherefore, Plaintiff prays that this Court award damages and provide relief as follows:

1. For injunctive relief, compelling Defendants to comply with the Americans with Disabilities Act and the Unruh Civil Rights Act. Note: the plaintiff is not invoking section 55 of the California Civil Code and is not seeking injunctive relief under the Disabled Persons Act at all.

2. For equitable nominal damages for violation of the ADA. See *Uzuegbunam v. Preczewski*, --- U.S. ---, 2021 WL 850106 (U.S. Mar. 8, 2021) and any other equitable relief the Court sees fit to grant.

3. Damages under the Unruh Civil Rights Act, which provides for actual damages and a statutory minimum of \$4,000 for each offense.

4. Reasonable attorney fees, litigation expenses and costs of suit, pursuant to 42 U.S.C. § 12205; and Cal. Civ. Code §§ 52.

Dated: May 6, 2021

CENTER FOR DISABILITY ACCESS

By: _____



Amanda Seabock, Esq.
Attorney for plaintiff